

UNITED STATES OF AMERICA
DISTRICT OF MASSACHUSETTS

FILED

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U.S. DISTRICT COURT
DISTRICT OF MASS

CASE NO: 03-12307-RGS

JOSEPH CRISTOFORO,
Plaintiff

vs.

JULIO LUPO,
FRANK G. COUSINS, JR., Individually and
in His Capacity as Essex County Sheriff, and
CERTAIN UNKNOWN INDIVIDUALS
Defendants

**DEFENDANT JULIO LUPO'S, ANSWER TO
DEFENDANT AND CROSS-CLAIMANT'S
FRANK G. COUSINS, JR.'s CROSS CLAIM
and DEFENDANT JULIO LUPO'S CROSS
CLAIM AGAINST FRANK G. COUSINS, JR.
AND DEMAND FOR JURY TRIAL**

Now comes the Defendant, **Julio Lupo**, in the above-entitled action, and through his counsel answers the cross-claim as follows:

1. The Defendant **admits** the allegations in this Paragraph.
2. The Defendant **admits** the allegations in this Paragraph.
3. The Defendant **admits** the allegations in this Paragraph.

COUNT I

INDEMNITY

4. The Defendant repeats and reaffirms his responses to the allegations set forth in the preceding Paragraphs of this Answer
5. The Defendant **denies** the allegations in this Paragraph.
6. The Defendant **denies** the allegations in this Paragraph.

COUNT II

CONTRIBUTION

7. The Defendant repeats and reaffirms his responses to the allegations set forth in the preceding Paragraphs of this Answer.
8. The Defendant **denies** the allegations in this Paragraph.
9. The Defendant **denies** the allegations in this Paragraph.

AFFIRMATIVE DEFENSES
FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

By way of affirmative defense, the Defendant states that the Crossclaimant fails to state a claim for which relief may be granted.

SECOND AFFIRMATIVE DEFENSE
(Qualified Immunity)

By way of affirmative defense, the Defendant states that the Crossclaimant's claims are barred under the doctrine of qualified immunity as the alleged acts complained of occurred within the scope of the Defendant's official duties and Defendant had no knowledge that said alleged acts were illegal and/or unconstitutional nor were said alleged acts clearly violative of Crossclaimant's rights at the time they were allegedly committed.

THIRD AFFIRMATIVE DEFENSE
(Frivolous Action Defenses)

By way of affirmative defense, the Defendant states that the Crossclaimant's claims are frivolous and not advanced in good faith and that therefore the Defendant is entitled to costs and attorneys fees pursuant to **42 U.S.C. §1988**.

FOURTH AFFIRMATIVE DEFENSE
(Violation of General Law Chapter 231, Section 6(f))

By way of affirmative defense, the Defendant states that the Crossclaimant is estopped from recovery by virtue of the fact that the Complaint contains allegations wholly unsubstantial, frivolous and not advanced in good faith and as such this Defendant is entitled to costs and attorneys fees for defense pursuant to **M.G.L. Chapter 231, Section 6(f)** and as otherwise allowed by law.

FIFTH AFFIRMATIVE DEFENSE
(Reservation of Rights to Assert Additional Defenses)

By way of affirmative defense, the Defendant states it reserves the right, after entering into discovery, to file additional affirmative defenses, claims and actions as may be necessary, compulsory or available.

REQUEST FOR RELIEF

DEFENDANT'S DEMAND OF TRIAL BY JURY

THE DEFENDANT DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

WHEREFORE, The Defendant requests that this Court:

- a. Find in its favor on all counts;
- b. Grant judgment in its favor;
- c. Dismiss the claims brought against it;
- d. Grant it costs and attorneys fees;
- e. Any other relief this Court deems equitable and just.

CROSS-CLAIM
(Lupo v. Sheriff Frank G. Cousins)

1. The Plaintiff, Joseph Christoforo, has filed a complaint against the defendants in this case, specifically alleging counts of negligence against the Sheriff.
2. The co-defendant, Frank Cousins, is the duly elected Sheriff of Essex County, Massachusetts with a principal place of business at the Essex County House of Correction, 20 Manning Avenue, Middleton, MA 01949.
3. The co-defendant, Julio Lupo, is an individual currently residing at 22 Worcester Road, Peabody, Massachusetts, 01960.

COUNT I
INDEMNITY

4. Lupo repeats and reaffirms his responses to the allegations set forth in the preceding Paragraphs of this Answer
5. If the Plaintiff recovers for any loss, either personal or property, then the damages were due in whole or in part to the Sheriff's actions and/or omissions.
6. That in the event of a finding in favor of the Plaintiff against Lupo and co-defendant Cousins, then co-defendant Cousins is obligated in whole or in part for the amount of the finding and/or judgment for damages that might enter against Lupo.

COUNT II
CONTRIBUTION

7. Lupo repeats and reaffirms his responses to the allegations set forth in the preceding Paragraphs of this Answer
8. If the Plaintiff recovers for any loss, either personal or property, then the damages were due in whole or in part to the Sheriff's actions and/or omissions.
9. That in the event of a finding in favor of the Plaintiff against Lupo and co-defendant Cousins, then co-defendant Cousins is obligated in whole or in part for the amount of the finding and/or judgment for damages that might enter against Lupo.

REQUEST FOR RELIEF

DEFENDANT'S DEMAND OF TRIAL BY JURY

THE DEFENDANT DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Respectfully submitted,
Julio Lupo



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Dated: June 25, 2004

CERTIFICATE OF SERVICE

I, Joseph W. Monahan, III, hereby certify that on **June 25, 2004**, I served a copy of the forgoing answer to Plaintiff's Amended Complaint by **regular mail, postage prepaid** to the following:

Plaintiff's Attorney

Edward J. McCormick, III
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144 Main Street
P.O. Box 318
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Co-Defendant's Attorney

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Boston, MA 02110



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